MOTION FILED
MAR 20 2001

(3)

No. 00-1307

In the Supreme Court of the United States

KENNETH S. APFEL, COMMISSIONER OF SOCIAL SECURITY,
Petitioner,

v.

SIGMON COAL COMPANY, INC. AND JERICOL MINING, INC.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

MOTION OF THE TRUSTEES OF THE UMWA COMBINED BENEFIT FUND TO FILE BRIEF AS *AMICI CURIAE* AND BRIEF OF *AMICI CURIAE* IN SUPPORT OF PETITIONER

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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

27 pp

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MOTION OF THE TRUSTEES OF THE UMWA COMBINED BENEFIT FUND FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

The Trustees of the United Mine Workers of America Combined Benefit Fund ("Combined Fund"), pursuant to Rule 37.2(b) of the Rules of this Court, respectfully move for leave to file the accompanying brief as *amici curiae* in this case in support of petitioner. The Trustees participated below as *amici* before both the court of appeals and the district court. In addition, the court of appeals granted the Trustees' motion to participate in the oral argument before that court. Counsel for the petitioner Commissioner of Social Security, and respondents Jericol Mining, Inc. ("Jericol") and Sigmon Coal Company ("Sigmon"), have been informed of this Motion. The Commissioner has consented to the filing of the Trustees' brief, and respondents have withheld such consent, thus necessitating the filing of this motion. For the reasons set forth below, the

Trustees respectfully request that their motion be granted and that the Court permit the filing of the accompanying brief in support of petitioner.

INTEREST OF THE *AMICI CURIAE*

This case involves the proper interpretation of the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701 *et seq.* (the "Coal Act"). Congress enacted the Coal Act to remedy a longstanding funding crisis in the collectively bargained multiemployer benefit plans that provided health coverage for the nation's coal industry retirees. *See Eastern Enterprises v. Apfel,* 524 U.S. 498, 504-15 (1998) (plurality opinion) (reviewing historical and legislative background of the Coal Act). The Combined Fund was created pursuant to Section 9702 of the Coal Act. 29 U.S.C. § 9702. The two pre-existing collectively bargained UMWA benefit plans were merged into the Combined Fund in accordance with the statute. 26 U.S.C. § 9702(a)(1), (2). The Combined Fund is an employee welfare benefit plan and a multiemployer plan within the meaning of Sections 3(1) and (37) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1002(1), (37). Now in its ninth fiscal year of operation under the Coal Act, the Combined Fund has extensive experience with the statute and with the coal industry. *See, e.g., Eastern Enterprises,* 524 U.S. at 504-15, 519 n.4 (plurality opinion) (citing cases). As a consequence, the Trustees of the Combined Fund are familiar with the issues in this case and their potential impact on the administration of the benefit program mandated by the Coal Act.

Under the Coal Act, the Social Security Administration ("SSA") is responsible for assigning individual Combined Fund beneficiaries to specific former employers pursuant to a three-tiered set of priorities set forth in Section 9706 of the statute. 26 U.S.C. § 9706. The employers receiving such assignments ("assigned operators") are then responsible for the payment of statutory premiums to finance the provision of health care benefits to their assigned beneficiaries. 26 U.S.C. § 9704. The Coal Act's scheme of liability contains broadly worded provisions that extend responsibility for Combined Fund beneficiaries to a wide range of entities, including current and former signatory operators, related persons to signatory operators, and successors. 26 U.S.C. §§ 9701(c)(1), 9711, 9712(d).

The issue in this case is whether the Coal Act permits SSA to assign Combined Fund beneficiaries to the "successor in interest" of an out-of-business "signatory operator," as those terms are defined in the Coal Act. As the entity charged by Congress with the responsibility to collect health care premiums from assigned operators and to provide health coverage to the Combined Fund's beneficiaries, that issue is of substantial and immediate concern to the Combined Fund. Since February 1993, the Combined Fund has provided benefits for all of the beneficiaries assigned to respondent Jericol, despite the fact that Jericol and its related person, respondent Sigmon, have failed in significant part to pay for those benefits.* The decision of the panel majority in the court below has prevented the Combined Fund from collecting the balance of the premiums owed by respondents, and, if permitted to stand, will create inconsistency in the Combined Fund's application of the Coal Act.

The Combined Fund has been directly involved in addressing the issue of whether SSA may assign beneficiaries to the successor in interest of a signatory operator. In addition to their participation as *amici curiae* in the briefing and oral argument before the Fourth Circuit in this case, the Trustees of the Combined Fund were parties in *R.G. Johnson Co., Inc. v. Apfel,* 172 F.3d 890 (D.C. Cir. 1999). In that case, the D.C. Circuit held that the Coal Act permits SSA to assign beneficiaries to the successor in interest of a signatory operator —a ruling directly at

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* SSA assigned certain Combined Fund beneficiaries to Jericol as a direct successor in interest to a defunct signatory operator, Shackleford Coal Company. Pet. App. 11a.

odds with the decision for which the Commissioner now seeks review. Moreover, the Trustees of the Combined Fund participated as *amici curiae* before the district court in *Aloe Energy Corp. v. Apfel*, No. 98-1371 (W.D.Pa. Oct. 12, 1999), *aff'd*, No. 99-3915 (3d Cir. June 20, 2000), *cert. pending*, No. 00-725 (docketed Nov. 7, 2000). The Third Circuit's ruling in *Aloe* is consistent with the reasoning and holding of the D.C. Circuit in *R.G. Johnson* and conflicts with the Fourth Circuit's ruling here..

As fiduciaries for the Combined Fund's beneficiaries, the Trustees have a substantial interest in the proper resolution of this conflict among the circuits. The Combined Fund is charged with providing vital health care benefits to thousands of coal industry retirees and their dependents throughout the country. To assure the continuation of these benefits, the Combined Fund seeks to maintain a funding base of contributing employers that is as broad as possible. If the decision below is unreviewed, there will be a clear and irreconcilable schism among the courts of appeals that surely will foster additional litigation by assigned operators seeking to rid themselves of their statutory obligations. It is the creation of this uncertainty and the opportunity for inconsistency in the application of the employer liability provisions of the Coal Act that would seriously and adversely affect the interests of the Combined Fund and its thousands of beneficiaries throughout the country.

CONCLUSION

The Trustees' motion should be granted, and the Court should permit the filing of the accompanying brief of the Trustees as *amici curiae* in support of petitioner.

Respectfully submitted,

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March 20, 2001

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BRIEF OF THE TRUSTEES OF THE UMWA COMBINED BENEFIT FUND AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

INTEREST OF THE *AMICI CURIAE*

The UMWA Combined Benefit Fund ("Combined Fund") is a statutory health care trust created by Congress under the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701 *et seq*. (the "Coal Act").[1] The Coal Act was passed to remedy a crisis in the funding of the preexisting collectively bargained multiemployer health benefit plans in the coal industry, a crisis that threatened to deprive retired miners and their dependents of promised health benefits. Under Section 9702 of the Coal Act, the preexisting UMWA benefit plans were merged into the newly created Combined Fund, and the Combined Fund began

[1] This brief was not authored in whole or in part by counsel for a party, and no person or entity, other than the Combined Fund, its Trustees, or its counsel, has made a monetary contribution to its preparation or submission..

providing health coverage as of February 1, 1993. The Trustees of the Combined Fund, chosen in accordance with Section 9702 of the statute, are charged with the responsibility for administering the Combined Fund, collecting health care premiums from assigned operators, and providing health coverage to the Combined Fund's beneficiaries.[2]

The issue in this case is whether the Coal Act permits the Social Security Administration ("SSA") to assign Combined Fund beneficiaries to the "successor in interest" of an out-of-business "signatory operator," as those terms are defined in the Coal Act. Pet. I. As the fiduciaries responsible for the health care of the Combined Fund's beneficiaries, the Trustees have a substantial and immediate concern with the resolution of that issue. Since February 1993, the Combined Fund has provided benefits for all of the beneficiaries assigned to respondent Jericol Mining, Inc. ("Jericol"), despite the fact that Jericol and its related person, respondent Sigmon Coal Company ("Sigmon"), have failed in significant part to pay for those benefits.[3] The decision of the panel majority in the court below has prevented the Combined Fund from collecting the balance of the premiums owed by respondents, and, if permitted to stand, will create inconsistency in the Combined Fund's application of the Coal Act.

The Trustees have a substantial interest in the proper resolution of the conflict in the circuits created by the court of appeals' divided decision in this case. The Combined Fund seeks to ensure that the base of contributing employers remains as broad as possible, so as to prevent an ever-increasing burden from falling on an ever-declining group of employers, which, in

[2] The Trustees of the Combined Fund are William P. Hobgood, Michael H. Holland, Marty D. Hudson, Thomas O.S. Rand, Elliot A. Segal, Carl E. Van Horn, and Gail R. Wilensky.

[3] SSA assigned certain Combined Fund beneficiaries to Jericol as a direct successor in interest to a defunct signatory operator, Shackleford Coal Company ("Shackleford"). Pet. App. 11a.

turn, could lead to a repeat of the crisis that Congress sought to resolve when it enacted the Coal Act in the first place. If the decision below stands, there is a serious possibility that companies liable under the Coal Act would seek to use the device of a successor firm to evade their statutory obligations. The court of appeals' decision could encourage assigned operators to try to terminate their Coal Act liability by changing the ownership of their working assets, distributing the proceeds to shareholders, and continuing their operations in a new corporate form. If this were to occur, the health benefits for the affected beneficiaries would be financed by an ever-shrinking group of responsible companies with no relationship to the beneficiaries. This would go a long way toward re-creating the very sort of dwindling funding base that Congress sought to rectify through the Coal Act.

The Trustees accordingly have a strong interest in supporting the position of petitioner in this case.

SUMMARY OF ARGUMENT

This case presents significant issues that warrant review by this Court.

First, the Fourth Circuit's decision creates a split among the federal appellate courts, for it is in direct and acknowledged conflict with the holdings of the two other appellate courts that have addressed the issue of whether the Coal Act permits SSA to assign Combined Fund beneficiaries to the successor in interest of a signatory operator. In contrast to the panel majority's decision, the D.C. Circuit in *R.G. Johnson Co., Inc. v. Apfel*, 172 F.3d 890 (D.C. Cir. 1999), and the Third Circuit in *Aloe Energy Corp. v. Apfel*, No. 99-3915 (3d Cir. June 20, 2000), *cert. pending*, No. 00-725 (docketed Nov. 7, 2000), sustained SSA's assignment of Combined Fund beneficiaries to a direct successor of a signatory operator.

Second, this Court should grant review because the decision below, although binding precedent only in the federal courts of

the Fourth Circuit, has a far larger practical impact. Given the numerous Combined Fund beneficiaries and coal companies that can be found within that circuit, many entities seeking to challenge SSA's position on successor in interest liability are likely to be able to satisfy applicable venue requirements within the Fourth Circuit. The panel's decision is likely to have a disproportionate significance, despite the fact that two other circuits already have resolved the issue the other way. This very real practical consideration militates strongly in favor of review now, before the conflict in the circuits greatly jeopardizes the provision of Combined Fund benefits to the beneficiaries whom the Coal Act is intended to protect.

Third, review is warranted because the court of appeals misapplied this Court's well-established rules governing statutory construction. Given the potential ambiguity in the statute, the panel should have deferred to the reasonable statutory interpretation of SSA, the agency entrusted to administer the assignment of beneficiaries under the Coal Act. *See Chevron v. NRDC*, 467 U.S. 837, 842-45 (1984). Moreover, the interpretation of the Coal Act by the panel majority is inconsistent with the principle that the meaning of statutory language should be determined in the context of, and with reference to, the statutory scheme of which it is a part. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-33 (2000). The following factors all tend to demonstrate that this is not a case in which an inescapable plain meaning of the statutory language somehow runs counter to the underlying statutory purpose:

- Nowhere in the Coal Act does Congress say—as it surely could have if it wished to—that SSA may *not* assign Combined Fund beneficiaries to successors in interest to signatory operators;
- As SSA has explained, Section 9701(c)(1)'s description of "related persons" is written in *inclusive* terms of the sort that courts have construed expansively;

- With respect to the two principal components of the Coal Act other than the Combined Fund—the individual employer plans and the 1992 Benefit Plan—Congress explicitly provided (in Section 9711(g)(1) of the statute) that successors in interest of signatory operators are just as liable as the signatory operators themselves;
- Senator Rockefeller, the chief sponsor of the Coal Act, expressly stated that the term "signatory operator" in Section 9701(c)(1) includes a successor in interest of such an operator, and no one in Congress challenged that assertion;
- Before any litigation on the subject, SSA, the agency charged with the statutory task of assigning Combined Fund beneficiaries under 26 U.S.C. § 9706(a), determined that assignments could be made to successors in interest to signatory operators;
- Even if one were to follow a rigid plain meaning approach, the explicit general rules of statutory construction set forth in 1 U.S.C. §§ 1-6 directly support the view that the statutory term "signatory operators" should be construed to include successors in interest to such operators; and
- SSA's construction is consistent with Congress' purpose in enacting the Coal Act and avoids the illogical consequences that follow from the panel majority's approach.

Finally, the Court should grant review because the holding of the panel majority is inconsistent with the reasoning of several federal appellate courts, including the Fourth Circuit, when presented with a similar question of statutory construction in the context of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.* (1980) ("CERCLA"), another federal statute with a wide-ranging remedial purpose. CERCLA also does not expressly address successor liability. Nevertheless, every federal court of appeals that has considered the question has decided that Congress intended successor corporations to be held liable

under the statute. For all these reasons, this Court should grant review and decide the question presented in this case.[4]

ARGUMENT

I. THE COURT SHOULD GRANT REVIEW TO RESOLVE A CONFLICT AMONG THE COURTS OF APPEALS

The decision below directly conflicts with the D.C. Circuit's decision in *R.G. Johnson* and the Third Circuit's decision in *Aloe*. The latter courts decided that invalidating SSA's assignment of Combined Fund beneficiaries to successors in interest of signatory operators would frustrate Congress' stated intent "to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees." *R.G. Johnson*, 172 F.3d at 895 (*citing* Pub. L. No. 102-486, § 19142(a)(2), 106 Stat. 3037 (codified at note following 26 U.S.C. § 9701 (1994))); *Aloe* (00-725 Pet. App. 8a). Moreover, these courts held that the Coal Act should be construed to permit assignments to direct successors in interest to avoid the implausible result that Congress authorized liability for successors to related persons but not for successors to signatory operators themselves. *Id.*

The Fourth Circuit wrongly declined to follow the reasoning of the D.C. Circuit and the Third Circuit. In rejecting the holding of those courts, the panel majority stated that "[w]e are not persuaded that there is no logic to shielding successors in interest to signatory operators from liability but not successors in interest to 'related persons.'" Pet. App. 32a. The panel suggested that Congress may have intended to exclude successors in interest from Combined Fund liability to "foster

[4] The Commissioner has suggested that the Court grant review of the earlier-filed petition in *Aloe*, No. 00-725, and hold the petition in this case pending the disposition of *Aloe*. Pet. 15. The Trustees support that suggested course, but they urge that, in the event the petition in *Aloe* is not granted, the petition in this case should be, so that the underlying legal issue can be resolved promptly.

the sale or transfer of coal companies." Pet. App. 34a. This conclusion is unsupported and unsupportable. As the late Judge Murnaghan stated in dissent, the majority's theory "presumes that Congress intended to promote the exact practice that necessitated legislative action in the first place." Pet. App. 42a; *see also R.G. Johnson*, 172 F.3d at 895 ("Nor are we impressed by our dissenting colleague's suggestion . . . that Congress could have intended to benefit coal miners by eliminating the impediment to the sale of a coal company posed by the potential liabilities created by the Coal Act."). Indeed, the purpose of the Coal Act will be undermined by the majority's decision, because health care costs for the Shackleford retirees will likely be borne by assigned operators with no connection to these retirees, while Jericol, the existing entity with a direct connection to the beneficiaries, will be absolved of all liability.

The majority ignores the fact that related persons to signatory operators are frequently coal operators themselves. The majority offers no explanation for why Congress would have been concerned with encouraging the sale of coal companies to successors in interest of signatory operators, but not with encouraging such sales to successors in interest of related persons. Likewise, the majority offers no explanation for why Congress would have included successors of signatory operators in Section 9711(g)(1) of the Coal Act, which applies to the UMWA 1992 Benefit Plan and individual employer plans, but excluded successors of signatory operators from SSA's assignment of Combined Fund beneficiaries. *See* Pet. App. 31a. If Congress intended to exclude successors in interest from Coal Act liability to encourage the sale of coal companies, why would it not have excluded successors in interest from liability to individual employer plans and the 1992 Plan as well?

Contrary to the majority's reasoning, the result below is not just "somewhat anomalous," Pet. App. 34a; it is an incongruous outcome that cannot be reconciled with the intent of Congress. It was precisely for this reason that the D.C. Circuit held that the

Coal Act authorizes SSA in appropriate circumstances to assign Combined Fund beneficiaries to successors to signatory operators. *R.G. Johnson*, 172 F.3d at 895. As the court of appeals there explained,

> In light of . . . the broad reach of the provisions imposing liability on related persons, we can think of no reason why Congress would have intended to impose liability for the beneficiaries on, for example, a successor in interest to a Coca-Cola bottling company under common control with a signatory coal mine operator while exempting a coal-mining successor in interest to that operator.

Id.; *see also Aloe*, 00-725 Pet. App. 8a. The panel majority's decision in this case fails to provide any reasonable explanation for why Congress allegedly intended such an odd outcome.

II. REVIEW SHOULD BE GRANTED TO PROTECT THE STABILITY OF THE COAL ACT

The opinion of the panel majority is also flawed because it completely ignores the potentially devastating consequences of its holding. The construction advocated by Jericol would create a serious possibility that companies liable under the Coal Act would seek to use the device of a successor firm to evade their statutory obligations. If the majority's decision stands, it will encourage assigned operators to try to terminate their Coal Act liability by changing the ownership of their working assets, distributing the proceeds to shareholders, and continuing their operations in a new corporate form. As Judge Murnaghan aptly stated, "excluding successors in interest from liability for retiree benefits does more than *promote* the sale of coal companies; it *actively encourages* the sale of coal companies." Pet. App. 42a (emphasis in original).

If the decision below is left undisturbed, health benefits for the affected beneficiaries would be financed by an ever-shrinking group of responsible companies with no relationship to the beneficiaries. If the assignments to Jericol are vacated, SSA will need to treat the beneficiaries as unassigned, except in

the unlikely event that SSA is able to identify another responsible operator to whom the beneficiaries could be assigned. *See* Pet. 14. The amount of funds available for transfer from the Abandoned Mine Reclamation Fund—a fund established under the Surface Mining Control and Reclamation Act of 1977—to pay for health benefits for unassigned miners is not unlimited, and in any event such funds are not available for the Combined Fund's first three plan years. *See* 30 U.S.C. §§ 1232 (h)(2) and (3)(B); 26 U.S.C. § 9705. When the monies from that Fund are exhausted or unavailable, the cost of providing benefits to the unassigned miners will be assessed against other operators to which beneficiaries have been assigned under the Act. *See* 26 U.S.C. § 9704(a)(3), (d).

This will have the effect of undermining the Coal Act's purpose, because financial responsibility for the Shackleford retirees' benefits will not be placed on Jericol, the existing entity with a direct connection to the beneficiaries. This would go a long way toward re-creating the very sort of dwindling funding base that Congress sought to rectify through the Coal Act. *See Holland v. Keenan Trucking Co.*, 102 F.3d 736, 738-39 (4th Cir. 1996)(discussing the "financial distress" of the UMWA Plans that led to the enactment of the Coal Act); Advisory Commission on United Mine Workers of America Retiree Health Benefits (the "Coal Commission") at p. 2 (stating that the UMWA Plans, "which were created to provide retired coal miners and their families with one of the finest health care programs in the nation" were in "financial crisis").[5] As the dissent observed, "[t]he majority's theory thus suggests that Congress intended to cure the crisis in the coal industry by infecting it with part of the disease." Pet. App. 43a.

Moreover, the circuit conflict created by the decision below may lead to serious inequities in the administration of the Coal Act. SSA has indicated in its Petition that it has assigned

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[5] The Coal Commission Report was filed as an attachment to the Trustees' brief as *amici curiae* in the court of appeals.

thousands of Combined Fund beneficiaries on the grounds that the assigned operators are successors in interests to out-of-business signatory operators. Pet. 14 n.4. Given the numerous Combined Fund beneficiaries and coal companies that can be found within the Fourth Circuit, many entities seeking to challenge SSA's position on successor liability are likely to be able to satisfy applicable venue requirements within that circuit. The Combined Fund and SSA are likely to find themselves faced with new legal challenges within the Fourth Circuit and other jurisdictions, resulting in great uncertainty in the administration of the statute. Likewise, Congress' intent to create an equitable allocation of financial responsibility among a broad range of entities is undermined by the panel's decision. Congress could not have intended for a Pennsylvania company, for example, to pay Combined Fund premiums based on successor liability, while at the same time shielding from liability an identically-situated Virginia company. The question presented therefore merits consideration by this Court.

III. THE FOURTH CIRCUIT'S OPINION MISCONSTRUES THE STATUTORY LANGUAGE, LEGISLATIVE HISTORY, AND PURPOSE OF THE COAL ACT, AS WELL AS THE HOLDINGS OF THIS COURT.

The panel majority erred in holding that the Coal Act text unambiguously excludes a successor in interest to a signatory operator from the definition of "related person" in Section 9701(c)(2)(A).[6] There are two ways in which the statutory

[6] The statutory definition of "related person" provides as follows:

> (A) In general.—A person shall be considered to be a related person to a signatory operator if that person is—
>
> > (i) a member of the controlled group of corporations (within the meaning of section 52(a)[of the Internal Revenue Code]) which includes such signatory operator;

language can be read to include signatory operators themselves and thus successors in interest to signatory operators as well. First, the signatory operators themselves are among the persons described in clauses (i), (ii), and (iii) of Section 9701(c)(1), each of which explicitly refers to signatory operators. Thus, when the statute refers to "a successor in interest of any person described" in clauses (i), (ii), and (iii), it includes successors to assigned operators themselves. Second, a signatory operator itself is, by definition, "a member of the controlled group of corporations . . . which includes such signatory operator," just as a father or mother is, by definition, a member of the family of which he or she is a part. Either way, if the signatory operator is considered "related" to itself, or if it is considered a "person described" in one or more of the explicitly enumerated categories of "related persons," a successor to the signatory operator would qualify as a "related person" under the statutory definition. At a minimum, nothing in the Coal Act expressly *prohibits* the assignment of Combined Fund beneficiaries to successors in interest of signatory operators, and Congress surely would have said so explicitly if it had intended to take such a peculiar step.

Although Congress could have expressed its intention more clearly in Section 9701(c)(1), SSA's interpretation is a plausible reading of the statutory language, and it is fully consistent with the congressional objectives of preserving a broad funding base for the Combined Fund and identifying assigned operators for as

> (ii) a trade or business which is under common control (as determined under section 52(b) [of the Internal Revenue Code]) with such signatory operator; or
>
> (iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries . . . .
>
> A related person *shall also include a successor in interest of any person described* in clause (i), (ii), or (iii).

26 U.S.C. § 9701(c)(2)(A)(emphasis added).

many Combined Fund beneficiaries as possible. Moreover, SSA's construction avoids the illogical consequences that follow from the panel majority's more restrictive approach. It is undisputed that the Coal Act authorizes assignments of beneficiaries to successors in interest to related persons to signatory operators. As the D.C. Circuit held, it is inconceivable that Congress would have decided to authorize liability for successors to related persons but not for successors to signatory operators themselves. *R.G. Johnson*, 172 F.3d at 895. Similarly it is undisputed that, where individual employer plans and the 1992 Benefit Plan are concerned, the Coal Act explicitly makes successors in interest of signatory operators liable to the same extent as the signatory operators themselves. 26 U.S.C. § 9711(g)(1). There is no logical reason why Congress would have wanted to adopt that approach with respect to individual employer plans and the 1992 Plan but not with respect to the Combined Fund. Nor is there the slightest hint anywhere in the legislative materials leading to the Coal Act that Congress had any such intent.

Moreover, even apart from the definition of "related persons," the Coal Act's references to "signatory operators," under the general rules of statutory construction applicable to all federal statutes, should be construed to include successors to such signatory operators. *See* 1 U.S.C. §§ 1-6. Section 9701(c)(1) defines a "signatory operator" as "a person which is or was a signatory to a coal wage agreement." Congress, however, did not define "person" in the Coal Act. Title 1 of the U.S. Code provides that the word "person" includes "corporations, companies, associations, firms, partnerships . . . as well as individuals." Section 5 of Title 1 states that "the word 'company' or 'association,' when used in reference to a corporation, shall be deemed to embrace the words, 'successors and assigns of such company or association,' in like manner as if these last-named words, or words of similar import, were expressed."

Thus, when the term "signatory operator" is read—using the general provisions of the U.S. Code as a key to Congress' intended meaning—it becomes clear that "signatory operator" is a person, which includes a company or association, as well as any successors and assigns of such company or association. Application of these statutory rules of construction to this case supports the conclusion that Congress intended the Coal Act to apply to direct successors of signatory operators.[7]

Given the potential ambiguity in the statute, the panel should have deferred to the reasonable statutory interpretation of SSA. That interpretation was established prior to any litigation on the issue. *See* Pet. 7-8, Pet. App. 83a-94a (Supp. Coal Act Review Instructions #4, July 1995). As the agency entrusted to administer the assignment of beneficiaries under the Coal Act, SSA's reasonable interpretation of the statute is entitled to substantial deference. *See Chevron*, 467 U.S. at 842-45; *Association of Bituminous Contractors, Inc. v. Apfel*, 156 F.3d 1246, 1251-52 (D.C. Cir. 1998)(holding that SSA's interpretation of the term "coal industry," as it is used in the Coal Act, is reasonable and should be upheld); *Lindsey Coal Mining Co. v. Chater*, 90 F.3d 688, 691-93 (3d Cir. 1996)(according deference to SSA's internal guidelines defining the Coal Act term "in business."). A court may set aside SSA's assignments to Jericol only if such actions are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." *See* 5 U.S.C. § 706(2)(A); *Aloe*, 00-725 Pet. App. 7a-8a (holding that SSA's assignment to the successor of a signatory operator "was neither arbitrary or capricious.").

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[7] There is no question that these general rules of statutory construction are an appropriate tool for the Court to use when deciding the plain meaning of "signatory operator" as used in the Coal Act. Title 1 of the U.S. Code provides that the general rules of construction apply in determining "the meaning of any Act of Congress, unless the context indicates otherwise." As previously explained, the Coal Act was enacted as a broad remedial statute, and the context therefore is fully in accord with the outcome indicated by the general rules of statutory construction.

Moreover, even if, contrary to everything we have said, the Court were to conclude that the statutory language is clear, it still would not follow inevitably that SSA should be prohibited from assigning Combined Fund beneficiaries to successors to signatory operators. Courts may look beyond the plain language of even unambiguous statutes where "the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters," *R.G. Johnson*, 172 F.3d at 895 (citing *United States v. Ron Pair Enters.*, 489 U.S. 235, 242 (1989)), or would lead to an absurd result, *Crooks v. Harrelson*, 282 U.S. 55, 59-60 (1930). It was on this basis that the D.C. Circuit in *R.G. Johnson* and the Third Circuit in *Aloe* upheld SSA's assignment of Combined Fund beneficiaries to the successor in interest of a signatory operator.

As the D.C. Circuit recognized, the legislative history and the text of the Coal Act demonstrate that Congress intended that direct successors to signatory operators should be liable for Combined Fund premiums. 172 F.3d at 895. In enacting the Coal Act, Congress recognized that a major cause of the funding crisis afflicting the existing collectively bargained multi-employer plans was signatory operators going out of business or transferring operations to a new entity, and leaving their former employees behind to obtain benefits financed by other employers. To ensure an equitable allocation of financial responsibility and a stable source of funds for health benefits, Congress imposed Coal Act liabilities on a broad range of entities. *See* Sections 9701(c), 9706(a), 9711(c),(g), 9712(d). In particular, Congress provided that all "related persons" of a signatory operator would be jointly and severally liable for the operator's Coal Act obligations, and Congress defined "related persons" broadly to find a specific obligor for as many beneficiaries as possible. *See* 138 Cong. Rec. 34002 (1992) ("[B]ecause of complex corporate structures which are often found in the coal industry, the number of entities made jointly and severally liable for a signatory operator's obligations under the definition of related person is intentionally very broad. In

this regard, the term 'related person' is defined broadly to include companies related to the signatory operator."); *id.* at 34001 ("definitions are intended by the drafters to be given a broad interpretation"). Excluding successors from this broad group of related persons would contravene congressional intent.

Senator Rockefeller, the principal sponsor of the Coal Act, confirmed the correctness of SSA's view in floor remarks shortly before the Senate's vote on the statute. In the course of clarifying a number of technical points, Senator Rockefeller stated that "[t]he term 'signatory operator,' as defined in new section 9701(c)(1), includes a successor in interest of such operator." 138 Cong. Rec. 34033 (1992) (statement of Sen. Rockefeller). As the principal sponsor of the legislation, Senator Rockefeller's unchallenged remarks are entitled to special weight. *See, e.g., North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 526-27 (1982)(remarks by the sponsor of legislation "are an authoritative guide to the statute's construction"); *Simpson v. United States*, 435 U.S. 6, 13-15 (1978)(same).

The broad purpose and overall statutory scheme of the Coal Act strongly supports Senator Rockefeller's view. The construction of the Coal Act by the panel majority is inconsistent with this Court's well-established principle that the meaning of statutory language should be determined in the context of, and with reference to, the statutory scheme of which it is a part. *See Brown & Williamson*, 529 U.S. at 132-33 ("It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'")(citing *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989)). Moreover, this Court has cautioned that "the plain-meaning rule is 'rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists.'" *Public Citizen v. U.S. Dep't. of Justice*, 491 U.S. 440, 455 (1989)(citing *Boston Sand & Gravel Co. v. United States*, 278 U.S. 41, 48 (1928) (Holmes, J.)). The Congress that enacted the

Coal Act to protect retiree health benefits, to assign as many Combined Fund beneficiaries as possible to specific operators, and to preserve a broad funding base for retiree health care did not want entities such as Jericol to receive the benefits of predecessor corporations, such as a trained and specialized work force, equipment in place, and uninterrupted operations, without shouldering the retiree health burdens of the previous entity.

IV. THE FOURTH CIRCUIT'S OPINION RUNS COUNTER TO FEDERAL APPELLATE DECISIONS IMPOSING SUCCESSOR LIABILITY IN THE CONTEXT OF CERCLA

In a highly analogous context, several courts of appeals, including the Fourth Circuit, have relied on accepted rules of statutory construction and established concepts of corporate law to hold successors liable for hazardous waste cleanup costs imposed by CERCLA, even though CERCLA does not expressly provide for successor liability. *See United States v. Carolina Transformer Co.*, 978 F.2d 832, 837-38 (4th Cir. 1992); *United States v. Mexico Feed & Seed Co.*, 980 F.2d 478, 486-87 (8th Cir. 1992); *Anspec Co. v. Johnson Controls, Inc.*, 922 F.2d 1240, 1247 (6th Cir. 1991); *Smith Land & Improvement Corp. v. Celotex Corp.*, 851 F.2d 86, 91-92 (3d Cir. 1988), *cert. denied*, 488 U.S. 1029 (1989). The reasoning of these courts, when applied to the question of successor liability under the Coal Act, provides additional support for SSA's assignments to Jericol.

The panel majority in this case wrongly dismissed the Fourth Circuit's holding in *Carolina Transformer* on the ground that that decision was based on language in CERCLA, which is "separate" and "unrelated" to the Coal Act. Pet. App. 35 n.7. In so holding, the panel ignored that the *Carolina Transformer* decision looked not only to the purpose of CERCLA as a remedial statute, but to "traditional and evolving principles of federal common law, which Congress has left to the courts to

supply interstitially." *Carolina Transformer*, 978 F.2d at 837-38.[8]

The considerations and concerns that allow successors to be held liable under CERCLA apply with greater force in the context of the Coal Act because successor liability is expressly included in the Coal Act. Here, as in CERCLA, Congress has enacted a broad, remedial statute. The underlying purpose of both statutes is to identify those entities most responsible for a problem Congress sought to rectify. Just as CERCLA permits a successor to be held liable because "Congress has emphasized funding by responsible parties," *Smith Land & Improvement Corp.*, 851 F.2d at 91, so too does the Coal Act permit assignment of Combined Fund liability to a successor to a signatory operator because Congress emphasized funding by the

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[8] Congress enacted CERCLA to "initiate and establish a comprehensive response and financing mechanism to abate and control the vast problems with abandoned and inactive hazardous waste disposal sites." *United States v. R.W. Meyer, Inc.*, 889 F.2d 1497, 1500 (6th Cir. 1989), *cert. denied*, 494 U.S. 1057 (1990). CERCLA, however, does not expressly include successors in its statutory scheme of liability. Instead, in the statutory provision discussing "covered persons," CERCLA simply provides that:

> (1) the owner and operator of a vessel or a facility,
>
> [and]
>
> (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
>
> . . . shall be liable for—
>
> (A) all costs of removal or remedial action incurred by the United States Government or a State.

42 U.S.C. § 9607(a)(1)-(2). Based upon this statutory language, entities have sought to avoid CERCLA liability by arguing that as a successor they do not satisfy the statutory definition of "covered person." Despite the statutory silence with respect to successor liability, courts that have considered this issue have consistently determined that Congress could not have intended to exempt successors from the reach of CERCLA liability. *See* cases cited in the preceding paragraph of text.

"persons most responsible for plan liabilities." Pub. L. No. 102-486, § 19142(a)(2), 106 Stat. 3037 (codified at note following 26 U.S.C. § 9701 (1994)). Here, the benefits of the miners' labor inured to Jericol as a successor to Shackleford, and it is the "most responsible party" to shoulder the responsibility of Combined Fund liability

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 20, 2001